

“(a) ESTABLISHMENT.—The Secretary shall establish a private sector involvement program to encourage States to contract with private firms for engineering and design services in carrying out Federal-aid highway projects when it would be cost effective.

“(b) GRANTS TO STATES.—

“(1) IN GENERAL.—In conducting the program under this section, the Secretary may make grants in each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 to not less than 3 States which the Secretary determines have implemented in the fiscal year preceding the fiscal year of the grant the most effective programs for increasing the percentage of funds expended for contracting with private firms (including small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals) for engineering and design services in carrying out Federal-aid highway projects.

“(2) USE OF GRANTS.—A grant received by a State under this subsection may be used by the State only for awarding contracts for engineering and design services to carry out projects and activities for which Federal funds may be obligated under title 23, United States Code.

“(3) FUNDING.—There are authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 1992 through 1997. Such sums shall remain available until expended.

“(c) REPORT BY FHWA.—Not later than 120 days after the date of the enactment of this Act [Dec. 18, 1991], the Administrator of the Federal Highway Administration shall submit to the Secretary a report on the amount of funds expended by each State in fiscal years 1980 through 1990 on contracts with private sector engineering and design firms in carrying out Federal-aid highway projects. The Secretary shall use information in the report to evaluate State engineering and design programs for the purpose of awarding grants under subsection (b).

“(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall transmit to Congress a report on implementation of the program established under this section.

“(e) ENGINEERING AND DESIGN SERVICES DEFINED.—The term ‘engineering and design services’ means any category of service described in section 112(b) of title 23, United States Code.

“(f) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall issue regulations to carry out this section.”

#### PILOT PROGRAM FOR UNIFORM AUDIT PROCEDURES

Pub. L. 102-240, title I, §1092, Dec. 18, 1991, 105 Stat. 2024, provided that:

“(a) ESTABLISHMENT.—The Secretary shall establish a pilot program under which any contract or subcontract awarded in accordance with section 112(b)(2)(A) of title 23, United States Code, shall be performed and audited in compliance with cost principles contained in the Federal acquisition regulations of part 31 of title 48 of the Code of Federal Regulations. The pilot program under this section shall include participation of not more than 10 States.

“(b) INDIRECT COST RATES.—In lieu of performing their own audits, the States participating in the pilot program shall accept indirect cost rates established in accordance with the Federal acquisition regulations for 1-year applicable accounting periods by a cognizant government agency or audited by an independent certified public accountant, if such rates are not currently under dispute. Once a firm’s indirect cost rates are accepted, all the recipients of such funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or defacto ceilings in accordance with section 15.901(c) of such title 48. A recipient of such funds requesting or using

the cost and rate data described in this subsection shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to any other firm or to any government agency which is not part of the group of agencies sharing cost data under this subsection, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

“(c) REPORT.—Each State participating in the pilot program shall report to the Secretary not later than 3 years after the date of the enactment of this Act [Dec. 18, 1991] on the results of the program.”

#### EVALUATION OF STATE PROCUREMENT PRACTICES

Pub. L. 102-240, title VI, §6014, Dec. 18, 1991, 105 Stat. 2181, directed Secretary to conduct a study to evaluate whether or not current procurement practices of State departments and agencies were adequate to ensure that highway and transit systems were designed, constructed, and maintained so as to achieve a high quality for such systems at the lowest overall cost and, not later than 2 years after Dec. 18, 1991, to transmit to Congress a report on the results of the study, together with an assessment of the need for establishing a national policy on transportation quality assurance and recommendations for appropriate legislative and administrative actions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 210 of this title.

### § 113. Prevailing rate of wage

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects on the Federal-aid highways authorized under the highway laws providing for the expenditure of Federal funds upon the Federal-aid systems, shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931, known as the Davis-Bacon Act (40 U.S.C. 276a).

(b) In carrying out the duties of subsection (a) of this section, the Secretary of Labor shall consult with the highway department of the State in which a project on any of the Federal-aid systems is to be performed. After giving due regard to the information thus obtained, he shall make a predetermination of the minimum wages to be paid laborers and mechanics in accordance with the provisions of subsection (a) of this section which shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project.

(c) The provisions of the section shall not be applicable to employment pursuant to apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90-495, §12(a), Aug. 23, 1968, 82 Stat. 821; Pub. L. 97-424, title I, §149, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 100-17, title I, §133(b)(5), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102-240, title I, §1006(g)(2), Dec. 18, 1991, 105 Stat. 1927.)

## REFERENCES IN TEXT

Act of March 3, 1931, known as the Davis-Bacon Act (40 U.S.C. 276a), referred to in subsec. (a), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

## AMENDMENTS

1991—Subsec. (a). Pub. L. 102-240, which directed substitution of “highways” for “systems, the primary and secondary, as well as their extension in urban areas, and the Interstate system,” was executed by making the substitution for the quoted words which in the original contained the word “extensions” rather than “extension”, to reflect the probable intent of Congress.

1987—Subsec. (a). Pub. L. 100-17 substituted “March 3, 1931” for “August 30, 1935” and “276a” for “267a”.

1983—Subsec. (a). Pub. L. 97-424 struck out “initial” after “subcontractors on the”.

1968—Subsec. (a). Pub. L. 90-495 extended wage rate provisions to the construction of all Federal-aid highway projects by amending provisions limiting them only to the Interstate System.

Subsec. (b). Pub. L. 90-495 substituted “any of the Federal-aid systems” for “the Interstate System”.

Subsec. (c). Pub. L. 90-495 added subsec. (c).

## EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

**§ 114. Construction**

(a) **CONSTRUCTION WORK IN GENERAL.**—The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State highway department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) **CONVICT LABOR AND CONVICT PRODUCED MATERIALS.**—

(1) **LIMITATION ON CONVICT LABOR.**—Convict labor shall not be used in construction of highways or portions of highways located on a Federal-aid system unless it is labor performed by convicts who are on parole, supervised release, or probation.

(2) **LIMITATION ON CONVICT PRODUCED MATERIALS.**—Materials produced after July 1, 1991,

by convict labor may only be used in such construction—

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) **QUALIFIED PRISON FACILITY DEFINED.**—As used in this subsection, “qualified prison facility” means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-657, §8(f), July 14, 1960, 74 Stat. 525; Pub. L. 93-87, title I, §115, Aug. 13, 1973, 87 Stat. 258; Pub. L. 97-424, title I, §148, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 98-473, title II, §226, Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100-17, title I, §112(a), (b)(1), Apr. 2, 1987, 101 Stat. 148; Pub. L. 102-240, title I, §1019, Dec. 18, 1991, 105 Stat. 1948.)

## AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-240, inserted “after July 1, 1991,” after “Materials produced” in introductory provisions.

1987—Subsec. (a). Pub. L. 100-17, §112(b)(1), inserted heading.

Subsec. (b). Pub. L. 100-17, §112(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Convict labor or materials produced by convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.”

1984—Subsec. (b). Pub. L. 98-473 which directed the insertion of “, supervised release,” after “parole” effective Nov. 1, 1987, was not executed, because of intervening general amendment of subsec. (b) by Pub. L. 100-17, §112(a), which contained “, supervised release,” after “parole” wherever appearing.

1983—Subsec. (b). Pub. L. 97-424 inserted “or materials produced by convict labor” after “Convict labor”.

1973—Subsec. (a). Pub. L. 93-87 amended last sentence generally. Prior to amendment, last sentence read as follows: “On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.”

1960—Subsec. (a). Pub. L. 86-657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

## EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the